

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SIOBHAN GENESSI,

Plaintiff,

v.

PLACER COUNTY SUPERIOR COURT,
et al.,

Defendants.

Case No. 2:23-cv-01054-DAD-JDP (PS)

ORDER

SCREENING PLAINTIFF'S COMPLAINT,
GRANTING HER MOTION TO PROCEED *IN*
FORMA PAUPERIS, AND DENYING HER
MOTION FOR APPOINTMENT OF
COUNSEL

ECF Nos. 1, 2, & 3

RESPONSE DUE IN THIRTY DAYS

Plaintiff Siobhan Genessi filed a complaint against the Placer County Superior Court, Placer County Child Protective Services, Placer County Counsel, and seven individuals, two of whom plaintiff identifies as CPS employees, alleging that her due process rights were violated in connection with her son's custody determination. Her complaint, however, fails to state a claim. I will give plaintiff a chance to amend her complaint before recommending dismissal. I will also grant her application to proceed *in forma pauperis*, ECF No. 2, which makes the showing required by 28 U.S.C. §§ 1915(a)(1) and (2), and deny her motion for appointment of counsel.

Motion to Appoint Counsel

Plaintiff moves for appointment of counsel. ECF No. 3. Plaintiff does not have a constitutional right to appointed counsel, *see Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir.

1997), and the court lacks the authority to require an attorney to represent plaintiff. *See Mallard v. U.S. Dist. Ct. for the S. Dist. of Iowa*, 490 U.S. 296, 298 (1989). The court can request the voluntary assistance of counsel. *See* 28 U.S.C. § 1915(e)(1) (“The court may request an attorney to represent any person unable to afford counsel”); *Rand*, 113 F.3d at 1525. But without means to compensate counsel, the court will seek volunteer counsel only in exceptional circumstances. In determining whether such circumstances exist, “the district court must evaluate both the likelihood of success on the merits [and] the ability of the [plaintiff] to articulate [her] claims pro se in light of the complexity of the legal issues involved.” *Rand*, 113 F.3d at 1525 (internal quotation marks and citations omitted).

Plaintiff argues that while she can communicate the facts of her case well, she struggles to understand the law. ECF No. 3 at 1. Plaintiff explains that she previously had counsel for her state court matter, but she fired the lawyer in November 2021 when he failed to appeal the custody determination. *Id.* at 2. The court finds that this case does not demonstrate exceptional circumstances warranting appointment of counsel. Plaintiff has not demonstrated that she is likely to succeed on the merits, and the allegations in the complaint are not exceptionally complicated.

Screening and Pleading Requirements

A complaint must contain a short and plain statement that plaintiff is entitled to relief, Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not require detailed allegations, but legal conclusions do not suffice. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). If the allegations “do not permit the court to infer more than the mere possibility of misconduct,” the complaint states no claim. *Id.* at 679. The complaint need not identify “a precise legal theory.” *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024, 1038 (9th Cir. 2016). Instead, what plaintiff must state is a “claim”—a set of “allegations that give rise to an enforceable right to relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264 n.2 (9th Cir. 2006) (en banc) (citations omitted).

1 The court must construe a pro se litigant's complaint liberally. *See Haines v. Kerner*, 404
 2 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant's complaint "if it
 3 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which
 4 would entitle him to relief." *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017).
 5 However, "'a liberal interpretation of a civil rights complaint may not supply essential elements
 6 of the claim that were not initially pled.'" *Bruns v. Nat'l Credit Union Admin.*, 122 F.3d 1251,
 7 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

8 **Analysis**

9 Plaintiff Siobhan Genessi brings this civil rights action against Placer County Superior
 10 Court, Placer County Child Protective Services ("CPS"), Placer County Counsel, Hilary Trauth,
 11 Bridget Riley, Bianca Yarmaluk, Roger Coffman, Kee Ann Smith, Kristina Shramek, and Jason
 12 Folker. ECF No. 1. The complaint alleges that on June 5, 2019, Placer County CPS removed her
 13 minor son under the pretext of a non-existent warrant. *Id.* at 1-2. Plaintiff discovered at a
 14 custody proceeding that the "charging documents" were identical to a complaint filed in Alabama
 15 family court three years prior. *Id.* at 2. The complaint alleges the Placer Court failed to give Full
 16 Faith and Credit to the Alabama decision, which was dismissed. *Id.*

17 After plaintiff's son was removed from her care, CPS employee defendant Bridge Riley
 18 supervised plaintiff's visits with her son. *Id.* The complaint alleges that Riley would threaten
 19 plaintiff with ending the visits early when plaintiff's son would misbehave. CPS suspended
 20 plaintiff's visits in September 2019 and plaintiff has not seen her son since, despite court orders
 21 that she be allowed therapeutic visits with her son in December 2019 and January 2020. *Id.* at 3.

22 In April 2020, CPS sent plaintiff's son to live with plaintiff's father's family in Texas. *Id.*
 23 While in Texas, her son was not enrolled in school or seen by a doctor, dentist, or therapist (to
 24 treat his autism). *Id.* at 4. The Placer Court held a hearing in August 2020 to determine custody
 25 of plaintiff's son. *Id.* at 4. Plaintiff claims that Franklin (plaintiff's son's father) paid Placer
 26 County Counsel to represent his interests at the hearing and that CPS employee defendant Trauth
 27 admitted on the stand that she tried to "get a confession out of" plaintiff. *Id.* at 4-5. The Placer
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1 Court awarded custody to the family in Texas and Franklin “accepted” custody of plaintiff’s son
2 in January 2021. *Id.*

3 Plaintiff seeks \$10 million in compensatory damages, \$20 million in punitive damages,
4 and full custody of her son. *Id.* at 6.

5 This court does not have jurisdiction over child custody claims, which are exclusively
6 matters of state law. *See Ankenbrandt v. Richards*, 504 U.S. 689, 702-04 (1992) (holding that the
7 domestic relations exception to federal subject matter jurisdiction “divests the federal courts of
8 power to issue divorce, alimony and child custody decrees”); *see also Peterson v. Babbitt*, 708
9 F.2d 465, 466 (9th Cir. 1983) (stating that “federal courts have uniformly held that they should
10 not adjudicate cases involving domestic relations, including ‘the custody of minors and a fortiori,
11 right of visitation[’;] the whole subject of domestic relations and particularly child custody
12 problems is generally considered a state law matter”). “Even when a federal question is
13 presented, federal courts decline to hear disputes [that] would deeply involve them in adjudicating
14 domestic matters.” *Thompson v. Thompson*, 798 F.2d 1547, 1558 (9th Cir. 1986).

15 Further, this court lacks subject matter jurisdiction to review final determinations of state
16 court custody proceedings. *See Worldwide Church of God v. McNair*, 805 F.2d 888, 890 (9th Cir.
17 1986) (“The United States District Court . . . has no authority to review the final determinations
18 of a state court in judicial proceedings.”). Under the *Rooker-Feldman* doctrine, a federal district
19 court does not have subject matter jurisdiction to hear an appeal from the judgment of a state
20 court. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 283-84 (2005); *see also*
21 *Dist. of Columbia Ct. of Appeals v. Feldman*, 460 U.S. 462, 476 (1983); *Rooker v. Fidelity Trust*
22 *Co.*, 263 U.S. 413, 415 (1923). To determine whether the *Rooker-Feldman* doctrine bars a case, a
23 court must first determine if the federal action contains a forbidden de facto appeal of a state court
24 judicial decision. *Noel v. Hall*, 341 F.3d 1148, 1156 (9th Cir. 2003). If it does not, “the *Rooker-*
25 *Feldman* inquiry ends.” *Bell v. City of Boise*, 709 F.3d 890, 897 (9th Cir. 2013). If a court
26 determines that the action is a “forbidden de facto appeal,” the court cannot hear the de facto
27 appeal portion of the case, and, “[a]s part of that refusal, it must also refuse to decide any issue
28 raised in the suit that is ‘inextricably intertwined’ with an issue resolved by the state court in its

1 judicial decision.” *Noel*, 341 F.3d at 1158; *see also Bell*, 709 F.3d at 897 (“The ‘inextricably
 2 intertwined’ language from *Feldman* is not a test to determine whether a claim is a de facto
 3 appeal, but is rather a second and distinct step in the *Rooker-Feldman* analysis.”). A complaint is
 4 a “de facto appeal” of a state court decision where the plaintiff “complains of a legal wrong
 5 allegedly committed by the state cour[t] and seeks relief from the judgment of that court.” *Noel*,
 6 341 F.3d at 1163.

7 Plaintiff asks this court to invalidate a state court decision granting custody of her son to
 8 her son’s father—which is squarely what *Rooker-Feldman* prohibits. *In re Gruntz*, 202 F.3d
 9 1074, 1079 (9th Cir. 2000). A request to vacate a family court order is generally considered a de
 10 facto appeal and barred by *Rooker-Feldman*. *See Moore v. Cnty. of Butte*, 547 F. App’x 826, 829
 11 (9th Cir. 2013); *Riley v. Knowles*, No. 1:16-CV-0057-JLT, 2016 WL 259336, at *3 (E.D. Cal.
 12 Jan. 21, 2016). Plaintiff’s action constitutes a “forbidden de facto appeal,” and the court lacks
 13 subject matter jurisdiction. *See Davis v. California Dep’t of Child Servs.*, No. 2:20-cv-01393-
 14 TLN-AC (PS), 2020 WL 5039243, at *2 (E.D. Cal. Aug. 26, 2020) (finding that plaintiff’s civil
 15 action regarding a state court’s child custody determination constituted a forbidden “de facto
 16 appeal” that was barred by the *Rooker-Feldman* doctrine).

17 The complaint also alleges a denial of familial association. Parents have a constitutionally
 18 protected liberty interest in the care and custody of their children. *Santosky v. Kramer*, 455 U.S.
 19 745, 753 (1982). “While a constitutional liberty interest in the maintenance of the familial
 20 relationship exists, this right is not absolute. The interest of the parents must be balanced against
 21 the interests of the state and, when conflicting, against the interests of the children.” *Woodrum v.*
 22 *Woodward Cty., Okl.*, 866 F.2d 1121, 1125 (9th Cir. 1989). The right to familial association has
 23 both a substantive and a procedural component. *Keates v. Koile*, 883 F.3d 1228, 1236 (9th Cir.
 24 2018). “While the right is a fundamental liberty interest, officials may interfere with the right if
 25 they provide the parents with fundamentally fair procedures[.]” *Id.* at 883 F.3d at 1236 (internal
 26 citations omitted); *see also Kirkpatrick v. Cty. of Washoe*, 843 F.3d 784, 789 (9th Cir. 2016)
 27 (quoting *Wallis v. Spencer*, 202 F.3d 1126, 1136 (9th Cir. 1999)) (The Fourteenth Amendment
 28 guarantees “that parents and children will not be separated by the state without due process of law

1 except in an emergency”). “Officials may not remove children from their parents without a court
2 order unless they have ‘information at the time of the seizure that establishes reasonable cause to
3 believe that the child is in imminent danger of serious bodily injury.’” *Keates*, 883 F.3d at 1236
4 (citing *Rogers v. Cnty. of San Joaquin*, 487 F.3d 1288, 1294 (9th Cir. 2007)).

5 Here, plaintiff alleges that CPS falsely represented that they had a warrant to remove her
6 child. While this allegation could potentially state a familial associate claim, plaintiff’s allegation
7 is conclusory and in need of elaboration. Plaintiff will be afforded an opportunity to amend her
8 complaint and elaborate on the circumstances surrounding her son’s removal by CPS. The court
9 understands the thrust of plaintiff’s complaint to center around her son’s custody determination,
10 which, as explained above, is outside this court’s jurisdiction.

11 I will allow plaintiff a chance to amend her complaint before recommending that this
12 action be dismissed. Plaintiff should also take care to add specific factual allegations against each
13 defendant. Indeed, several of the listed defendants are mentioned nowhere in the complaint. If
14 plaintiff decides to file an amended complaint, the amended complaint will supersede the current
15 one. *See Lacey v. Maricopa Cnty.*, 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc). This means
16 that the amended complaint will need to be complete on its face without reference to the prior
17 pleading. *See E.D. Cal. Local Rule 220*. Once an amended complaint is filed, the current one no
18 longer serves any function. Therefore, in an amended complaint, as in the original, plaintiff will
19 need to assert each claim and allege each defendant’s involvement in sufficient detail. The
20 amended complaint should be titled “First Amended Complaint” and refer to the appropriate case
21 number. If plaintiff does not file an amended complaint, I will recommend that this action be
22 dismissed.

23 Accordingly, it is hereby ORDERED that:


- 24 1. Plaintiff’s request for leave to proceed *in forma pauperis*, ECF No. 2, is granted.
- 25 2. Plaintiff’s motion for the appointment of counsel, ECF No. 3, is denied.
- 26 3. Within thirty days from the service of this order, plaintiff must either file an
27 amended complaint or advise the court she wishes to stand by her current complaint. If she
28 selects the latter option, I will recommend that this action be dismissed.

1 4. Failure to comply with this order will result in the dismissal of this action.

2 5. The Clerk of Court is directed to send plaintiff a new form complaint.

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5 IT IS SO ORDERED.

6 Dated: December 19, 2023

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JEREMY D. PETERSON
8 UNITED STATES MAGISTRATE JUDGE
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